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Attorneys for Plaintiff JOHN ORNELAS,
 individually and on behalf of all others similarly situated

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

JOHN ORNELAS, individually and on
 behalf of all others similarly situated,

Plaintiff,

vs.

TAPESTRY, INC., a Maryland corporation;
 and DOES 1 through 25, inclusive,

Defendants.

CASE NO.: 3:18-cv-06453-WHA

[CLASS ACTION]

FIRST AMENDED COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194 *et seq.*);
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE § 510)
4. FAILURE TO PROVIDE MEAL & REST PERIODS (LABOR CODE § 226.7 and 512)
5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
6. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
7. UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*); and
8. PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

1 Plaintiff JOHN ORNELAS (“Plaintiff”), individually and on behalf of all similarly
 2 situated individuals, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants TAPESTRY, INC.,
 5 and DOES 1 through 25, inclusive (collectively, “Defendants”, “Tapestry” or “Company”), on
 6 behalf of Plaintiff and all other individuals who were or are employed as non-exempt, hourly
 7 employees at Defendant’s Stuart Weitzman, Kate Spade, and Coach retail stores and locations in
 8 California (collectively, “Sales Employees” or “Class Members”), at any time during the four
 9 years preceding the filing of this action, and continuing while this action is pending (“Class
 10 Period”), and who were denied the benefits and protections required under the Labor Code and
 11 other statutes and regulations applicable to employees in the State of California.

12 2. During the Class Period, Defendant:

- 13 a. failed to pay wages for all hours worked, including for hours
 14 worked in excess of eight hours a day or forty hours a week, by the Sales
 15 Employees;
- 16 b. failed to pay minimum wages due to the Sales Employees;
- 17 c. failed to provide the Sales Employees with timely and accurate wage and
 18 hour statements;
- 19 d. failed to pay the Sales Employees compensation in a timely manner upon
 20 their termination or resignation;
- 21 e. failed to maintain complete and accurate payroll records for the Sales
 22 Employees;
- 23 f. wrongfully withheld wages and compensation due to the Sales
 24 Employees; and
- 25 g. committed unfair business practices in an effort to increase profits and to
 26 gain an unfair business advantage at the expense of the Sales Employees
 27 and the public;

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THE PARTIES

9. Plaintiff John Ornelas was employed by Defendant as a non-exempt, hourly Sales employee within the last year, and worked out of Defendants' Stuart Weitzman retail store located at the Topanga mall in Canoga Park, California. Plaintiff also periodically worked at Defendant's Stuart Weitzman store locations in Beverly Hills, California.

10. Defendant TAPESTRY, INC. are, and at all relevant times, was a corporation incorporated under the laws of Maryland, and having a principal place of business in New York. Upon information and belief, the Company owns and operates a chain of retail stores and locations in California under the names "Stuart Weitzman", "Kate Spade", and "Coach", and sell clothing, accessories, and/or furniture.

11. Plaintiff is currently unaware of the true names and capacities of the defendants sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when they are ascertained. Plaintiff is informed and believe and based thereon state that the persons sued herein as DOES are in some manner responsible for the conduct, injuries and damages herein alleged.

12. Plaintiff is informed and believe and based thereon allege that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is responsible in some manner for the occurrences, controversies and damages alleged below.

13. Plaintiff is informed and believe and based thereon allege that DOES 1 through 25, inclusive, were the agents, servants and/or employees of Defendants and, in doing the things hereinafter alleged and at all times, were acting within the scope of their authority as such agents, servants and employees, and with the permission and consent of Defendants.

14. Plaintiff is informed and believes and based thereon alleges that Defendants ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged herein. Each of the defendants was the agent and/or employee of the others, and the conduct of each defendant herein alleged was authorized and/or ratified by the others. The conduct of the

1 Company was carried on by and through its authorized agents, including owners, officers,
2 directors, managers and supervisors.

3 **FACTS**

4 15. Defendants employed Plaintiff John Ornelas as a non-exempt, hourly-paid
5 employee from approximately April 2016 to June 2018 at Defendant's Stuart Weitzman retail
6 locations in Canoga Park and Beverly Hills, California. During his employment, Plaintiff worked
7 full-time as a Sales Associate in Defendant's retail stores. Plaintiff typically worked eight (8) or
8 more hours per day and five (5) days per week.

9 16. During Plaintiff's employment with Defendants, the Company implemented a
10 security/loss prevention measure that requires all Sales Employees to have their bags, jackets,
11 and other personal items checked by a Tapestry employee prior to leaving the retail store for all
12 shifts and breaks. Defendant routinely fails to give Sales Employees, including Plaintiff, their
13 legally required duty-free rest and meal periods and full pay by requiring them to remain in the
14 store for a substantial period of time off the clock to engage in Tapestry's theft prevention
15 program.

16 17. Sales Employees, including Plaintiff, would clock out in their respective stores,
17 and would wait to have another Tapestry employee to inspect their bags, clothing, and other
18 items. This was all done off-the-clock and in violation of the Employment Laws and
19 Regulations. Tapestry theft prevention program is a pervasive and continuous policy, practice,
20 and/or procedures which deprives Class Members of their full wages. Accordingly, Defendants
21 failed to pay Plaintiff and Sales Employees for all hours worked.

22 18. Sales Employees, including Plaintiff, are and were not compensated for the time
23 spent waiting to be released from Defendant's retail stores and locations. When Class Members,
24 including Plaintiff, wait for and undergo the bag and security inspection, they are under the
25 control of their employer and must be compensated for that time. *See Morillion v. Royal Packing*
26 *Co.*, 22 Cal.4th 575 (2000); *See also Troester v. Starbucks Corp.*, 421 P.3d 1114 (2018).

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1 19. Similarly, as a result of Defendant's required bag and security inspections, Sales
2 Employees, like Plaintiff, are also regularly denied by Defendants mandated meal and rest breaks
3 in accordance with *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012).

4 20. Accordingly, Defendants failed to pay Plaintiff and Sales Employees for all hours
5 worked.

6 21. During Plaintiff's employment with Defendants, Defendants failed and refused to
7 provide Plaintiff with timely and accurate wage and hour statements in violation of the
8 Employment Laws and Regulations.

9 22. During Plaintiff's employment with Defendants, Defendants wrongfully withheld
10 from Plaintiff and failed to pay wages and other compensation due for all hours worked, and as
11 otherwise required per Employment Laws and Regulations.

12 23. To the extent that any Sales Employee, including Plaintiff, entered into any
13 arbitration agreement with any Defendant, such agreement is void and unenforceable. Any such
14 agreement was one of adhesion, executed under duress, lacked consideration and mutuality, and
15 is otherwise void under both Labor Code § 229 and the California Supreme Court case of
16 *Armendariz v. Foundation Health Psychare Services, Inc.*, 24 Cal.4th 83 (2000).

17 **CLASS ACTION ALLEGATIONS**

18 24. All current and former Sales Employees who were employed by Defendant in
19 California during the Class Period, including Plaintiff, are proposed class members (henceforth,
20 "Class Members").

21 25. The Sales Employees' duties and activities during their respective working hours
22 and each shift are known to and directed by Defendants, and are set and controlled by
23 Defendants.

24 26. During the Class Period, Defendants have routinely failed to provide Sales
25 Employees with legally compliant and mandated meal and rest breaks.

26 27. During the Class Period, the Company refused to compensate Sales Employees for
27 all wages earned ("off-the-clock" work) and for all hours worked including time during which
28 Sales Employees were subject to Defendants' control and were suffered or permitted to work for

1 the Company. The Company failed and refused to pay Sales Employees for all hours worked,
2 including but not limited to time worked after the official end times of their shifts.

3 28. During the Class Period, Defendants have failed and refused to provide Sales
4 Employees with timely and accurate wage and hour statements.

5 29. During the Class Period, Defendants have failed and refused to pay accrued wages
6 and other compensation earned and due immediately to Sales Employees who were terminated,
7 and Defendants have failed and refused to pay accrued wages and other compensation earned and
8 due within seventy-two hours to Sales Employees who ended their employment.

9 30. During the Class Period, Defendant has failed and refused to maintain complete
10 and accurate payroll records for Sales Employees showing gross hours earned, total hours
11 worked, all deductions made, net wages earned, and all applicable hourly rates in effect during
12 each pay period and the corresponding number of hours worked at each hourly rate.

13 31. During the Class Period, Defendant has wrongfully withheld and failed to pay
14 Sales Employees wages and other compensation earned and due them for all hours worked and as
15 otherwise required pursuant to the Employment Laws and Regulations.

16 32. Defendant's conduct violated the Employment Laws and Regulations. Defendant's
17 systematic acts and practices also violated, *inter alia*, Business & Professions Code §§ 17200, *et*
18 *seq.*

19 33. Plaintiff also seeks of all other compensation and all benefits required pursuant to
20 the Employment Laws and Regulations, plus penalties and interest, owed to Sales Employees.

21 34. The duties and business activities of the Class Members were essentially the same
22 as the duties and activities of the Plaintiff described above. At all times during the Class Period,
23 all of the Class Members were employed in the same or similar job as Plaintiff (as a non-exempt,
24 hourly Sales employee) and were paid in the same manner and under the same standard
25 employment procedures and practices as Plaintiff.

26 35. During the Class Period, Defendant was fully aware that Plaintiff and the Class
27 Members were performing "off-the-clock" unpaid work and not being paid for all hours worked in
28 violation of the provisions of the Labor Code.

36. Defendant's violations of the Employment Laws and Regulations were repeated, willful and intentional.

37. Plaintiff and the Class Members have been damaged by Defendant's conduct.

38. While the exact number of Class Members is unknown to Plaintiff at the present time, based on information and belief, there are more than 50 such persons. A class action is the most efficient mechanism for resolution of the claims of the Class Members.

39. In addition, a class action is superior to other available methods for the fair and efficient adjudication of this controversy because the damages suffered by individual Class Members may be relatively small, and the expense and burden of individual litigation would make it impossible for such Class Members individually to redress the wrongs done to them. Moreover, because of the similarity of the Class Members' claims, individual actions would present the risk of inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

40. Plaintiff is currently unaware of the identities of all the Class Members. Accordingly, Defendants should be required to provide to Plaintiff a list of all persons employed as Sales Employees (and similarly situated individuals who held titles involving the sale and service of products in Stuart Weitzman, Kate Spade, and Coach retail locations) in California beginning four years prior to the filing of this Complaint until the present, stating their last known addresses and telephone numbers, so that Plaintiff may give such Class Members notice of the pendency of this action and an opportunity to make an informed decision about whether to participate in it.

41. The proposed Class that Plaintiff seeks to represent is defined as follows:

All Sales Employees who are or have been employed by Defendant in the State of California at any time and at any Kate Spade, Coach, and/or Stuart Weitzman retail store or location during the four years prior to the commencement of this suit and continuing while this Action is pending.

42. There is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable:

a. Numerosity: While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants have employed in

1 excess of 100 persons as Sales Employees in California during the proposed Class Period.

2 b. Commonality: There are questions of law and fact common to Plaintiff and
3 the Class that predominate over any questions affecting only individual Class Members. These
4 common questions of law and fact include, without limitation:

- 5 i. Whether Defendants failed to compensate Plaintiff and the Class
6 Members for all hours worked;
- 7 ii. Whether Defendants did not have any formal policies or procedures
8 in place applicable to Plaintiff and Class Members relating to meal
9 periods;
- 10 iii. Whether Defendants' theft prevention program failed to pay
11 Plaintiff and the Class Members for all hours worked including
12 overtime premium pay by requiring Class Members to engage in
13 post shift activities without wages.
- 14 iv. Whether Defendants uncompensated theft prevention program
15 interrupted, impeded, or shortened the time for Class Members to
16 take meal and rest breaks that did not comply with the requirements
17 of *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012);
- 18 iv. Whether Defendants failed to pay Plaintiff and the Class Members
19 the required minimum wage for every hour where work was
20 performed;
- 21 v. Whether Defendants failed to provide Plaintiff and the Class
22 Members with accurate itemized statements;
- 23 vi. Whether Defendants failed to provide meal breaks for
24 Plaintiff and the Class Members;
- 25 vii. Whether Defendants owe Plaintiff and the Class Members waiting
26 time penalties pursuant to Labor Code §203;
- 27 viii. Whether Defendants engaged in unfair business practices under
28 Business and Professions Code §17200;

ix. The effect upon and the extent of damages suffered by Plaintiff and the Class Members and the appropriate amount of compensation.

c. Typicality: Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and all Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein.

d. Adequacy of Representation: Plaintiff are members of the proposed Class and will fairly and adequately represent and protect the interests of the Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour and other employment class actions.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Questions of law and fact common to the proposed Class predominate over any questions affecting only individual Class Members. Each proposed Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices of failing to pay full and correct wages, including the minimum wage and overtime premium wages, as required by law. A class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194

By Plaintiff Individually and on Behalf of All Class Members)

43. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

44. Plaintiff brings this action to recover unpaid compensation for all hours worked, including for work over eight hours in a day and over forty hours in a workweek.

45. Defendants' conduct described in this Complaint violates, among other things, Labor Code §§ 204, 216, 218, 218.5, 218.6, 510, 1194, and 1198 and the IWC Wage Orders.

1 46. Defendants failed to pay Plaintiff and the Class Members for all of the actual hours
2 worked, including for work over eight hours in a day and over forty hours in a workweek. As
3 stated, Defendant had, and continues to have, a security/loss prevention standards policy
4 mandating that Plaintiff and class members undergo security bag and clothing checks before
5 leaving the store premises. Specifically, after clocking out for their meal breaks and/or at the end
6 of their shifts, Plaintiff and class members were required to wait off-the-clock for another
7 employee to become available to perform the security bag check before they could leave. Plaintiff
8 was required to wait “off-the-clock” for another employee to perform the security bag check
9 before he was permitted to leave the store premises. Defendant did not pay at least minimum
10 wages for the time Plaintiff and Class Members spent waiting to undergo security bag checks that
11 would have qualified for overtime pay. Also, to the extent that these off-the-clock hours did not
12 qualify for overtime premium payment, Defendants did not pay even minimum wages for those
13 hours in violation of California Labor Code sections 1194, 1197, and 1197.1.

14 47. Plaintiff and the Class Members are also entitled to penalties pursuant to Paragraph
15 No. 20 of the applicable IWC Wage Order which provides, in addition to any other civil penalties
16 provided by law, any employer or any other person acting on behalf of the employer who violates,
17 or causes *to be* violated, the provisions of the IWC Wage Order, shall be subject to a civil penalty
18 of \$50.00 (for initial violations) or \$100.00 (for subsequent violations) for each underpaid
19 employee for each pay period during which the employee was underpaid in addition to the amount
20 which is sufficient to recover unpaid wages.

21 48. Defendant knew or should have known that its security/loss prevention standards
22 policy caused Plaintiff and class members to incur off-the-clock time after punching out based on
23 the location of Defendant's timekeeping system at the back of stores and requiring security bag
24 checks to take place at the front of their stores. However, Defendant did not compensate Plaintiff
25 and class members for the time they spent off-the-clock to undergo security bag checks. To the
26 extent that the time Plaintiff and class members were subjected to security bag checks pursuant to
27 Defendant's security/loss prevention policy qualified for overtime pay, Defendants failed to pay
28 Plaintiff and class members overtime wages in violation of California Labor Code §§ 510 and

1 1198.

2 49. As a result of Defendant's unlawful acts, Plaintiff and Class Members have been
3 deprived of compensation in an amount according to proof at the time of trial, and are entitled to
4 recovery of such amounts, plus interest thereon, liquidated damages pursuant to Labor Code §
5 1194.2, and attorneys' fees and costs, pursuant to Labor Code §§ 1194 and 2698, in an amount
6 according to proof at the time of trial. Plaintiff and the Class Members are also entitled to
7 additional penalties and/or liquidated damages pursuant to statute.

8 **SECOND CAUSE OF ACTION**

9 **(Failure to Pay Minimum Wages - Labor Code § 1194**

10 **By Plaintiff Individually and on Behalf of All Class Members)**

11 50. As a separate and distinct cause of action, Plaintiff complains and realleges all of
12 the allegations contained in this complaint, and incorporate them by reference into this cause of
13 action as though fully set forth herein, excepting those allegations which are inconsistent with this
14 cause of action.

15 51. At all relevant times, the IWC Wage Orders contained in Title 8 of the Code of
16 Regulations ("Wage Orders") applied to Plaintiff in Plaintiff's capacity as employees of
17 Defendants. The Wage Orders and California law provided, among other things, that Plaintiff
18 must receive minimum wage earnings for all hours worked.

19 52. During the Class Period, Defendants have routinely failed to pay Class Members,
20 including Plaintiff, the minimum wage required by the Employment Laws and Regulations for all
21 hours worked.

22 53. The Class Members, including Plaintiff, have been deprived of their rightfully
23 earned minimum wages as a direct and proximate result of Defendants' policies and practices and
24 Defendants' failure and refusal to pay said wages for all hours worked. The Class Members,
25 including Plaintiff, are entitled to recover the past wages owed to them, under the minimum wage
26 laws, plus an additional equal amount as liquidated damages as permitted under the Wage Orders
27 and California law, plus interest thereon and attorneys' fees and costs pursuant to Labor Code §§
28 1194 and 2698, in an amount according to proof at the time of trial.

THIRD CAUSE OF ACTION

**(Failure to Pay Overtime Compensation - By Plaintiffs Individually and on Behalf of All
Class Members: California Labor Code §§ 510 and 1194)**

54. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

55. During the Class Period, Defendant has routinely required Sales Employees, including Plaintiff, to work over eight hours in a day and over forty hours in a workweek. However, Defendant has failed and refused to pay the Sales Employees, including Plaintiff, the overtime compensation required by the Employment Laws and Regulations.

56. Defendant knew or should have known that its security/loss prevention standards policy caused Plaintiff and class members to incur off-the-clock time after punching out based on the location of Defendant's timekeeping system at the back of stores and requiring security bag checks to take place at the front of their stores. However, Defendant did not compensate Plaintiff and class members for the time they spent off-the-clock to undergo security bag checks. To the extent that the time Plaintiff and class members were subjected to security bag checks pursuant to Defendant's security/loss prevention policy qualified for overtime pay, Defendant failed to pay Plaintiff and class members overtime wages in violation of California Labor Code §§ 510 and 1198.

57. The Sales Employees, including Plaintiff, have been deprived of their rightfully earned overtime compensation as a direct and proximate result of Defendant's policies and practices and Defendant's failure and refusal to pay that compensation. The Sales Employees, including Plaintiff, are entitled to recover such amounts, plus interest, attorney's fees and costs.

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FOURTH CAUSE OF ACTION

(Failure to Provide Meal and Rest Periods - Labor Code §§ 226.7 and 512

By Plaintiff Individually and on Behalf of All Class Members)

58. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

59. During the Class Period, Defendant has failed to provide Sales Employees, including Plaintiff, legally compliant meal and rest periods during their work shifts, and has failed to compensate Sales Employees, including Plaintiff, for those meal and rest periods, as required by Labor Code § 226.7 and the other applicable sections of the Employment Laws and Regulations.

60. Defendant's timekeeping systems are located at the back of their retail stores, while Plaintiff and Class Members were required to undergo security bag checks at the front of their stores after they had already clocked out for a meal break. For example, Plaintiff carried his backpack to work and after clocking out at the back of the store for the end of his shift or a meal break, was required to undergo a security bag check at the front of the store. After clocking out and then walking to the front of the store, Plaintiff had to wait for another employee to become available to perform the security bag check before he was permitted to leave. Thus, after clocking out for a supposed meal break or stepping away for a purported rest break, Plaintiff remained under the custody and control of Defendant, and therefore such breaks - whether meal breaks or rest breaks - are interrupted, impeded, shortened and overall illusory in nature.

61. The Sales Employees, including Plaintiff, have been deprived of their rightfully earned compensation for meal and rest periods as a direct and proximate result of Defendants' policies and practices and Defendants' failure and refusal to pay that compensation. The Sales Employees, including Plaintiff, are entitled to recover such amounts pursuant to Labor Code § 226.7(b), plus interest.

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FIFTH CAUSE OF ACTION

(Failure to Furnish Accurate Wage and Hour Statements - Labor Code § 226

By Plaintiff Individually and on Behalf of All Class Members)

62. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

63. During the Class Period, Defendant has routinely failed to provide Class Members, including Plaintiff, with timely and accurate wage and hour statements showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

64. As a consequence of Defendant's actions, Class Members are entitled to all available statutory penalties, costs and reasonable attorneys' fees, including those provided in Labor Code § 226(e), as well as all other available remedies.

SIXTH CAUSE OF ACTION

(For Waiting Time Penalties - Labor Code §§ 201-203

By Plaintiff Individually and on Behalf of All Class Members)

65. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

66. During the Class Period, Defendant failed to pay accrued wages and other compensation due immediately to each Class Member who was terminated, and failed to pay accrued wages and other compensation due within seventy-two hours to each Class Member, including Plaintiff, who ended his employment.

67. Labor Code § 201 requires an employer who discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code § 203

1 provides that if an employer willfully fails to pay compensation promptly upon discharge, as
 2 required by § 201, the employer is liable for waiting time penalties in the form of continued
 3 compensation for up to 30 work days.

4 68. Defendant, and each of them, willfully failed and refused, and continue to willfully
 5 fail and refuse, to timely pay compensation due to Class Member upon termination or resignation,
 6 as required by Labor Code § 201. As a result, Defendant, and each of them, are liable to Plaintiff
 7 and all Class Members similarly situated for waiting time penalties, together with interest thereon,
 8 pursuant to Labor Code § 203, as well as all other available remedies, in an amount according to
 9 proof at the time of trial.

11 **SEVENTH CAUSE OF ACTION**

12 **(For Unfair Competition - Business & Professions Code § 17200, *et seq.***

13 **By Plaintiff Individually and on Behalf of All Class Members)**

14 69. As a separate and distinct cause of action, Plaintiff complains and realleges all of
 15 the allegations contained in this complaint, and incorporates them by reference into this cause of
 16 action as though fully set forth herein, excepting those allegations which are inconsistent with
 17 this cause of action.

18 70. As a result of Defendants' unfair business practices, Defendants have reaped unfair
 19 benefits and illegal profits at the expense of Class Member s, including Plaintiff, and members of
 20 the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to
 21 Class Member s, including Plaintiff.

22 71. Defendants' unfair business practices violate the Unfair Competition Laws and
 23 entitle Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to,
 24 orders that Defendants account for, disgorge and restore to the Class Member s, including
 25 Plaintiff, the wages and other compensation unlawfully withheld from them.

26 72. In addition to the actual damages caused by the unlawful conversion, the Class
 27 Members, including Plaintiff, are entitled to recover exemplary damages for the sake of example
 28 and by way of punishing Defendants.

EIGHTH CAUSE OF ACTION

(For Private Attorneys General Act - Labor Code §§ 2698, *et seq.*

By Plaintiff Individually and on Behalf of All Class Members)

73. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

74. Plaintiff is an aggrieved employee as defined in Labor Code § 2699 (a). Plaintiff brings this cause on behalf of himself and other current or former employees affected by the labor law violations alleged in this complaint.

75. Defendant, at all times relevant to this complaint, were employers or persons acting on behalf of an employer who violated Plaintiff's rights by violating the aforementioned Labor Code sections and are therefore subject to civil penalties.

76. Defendant committed the following violations of the Labor Code against Plaintiff, and, on information and belief, against other current or former employees while they were employed by Defendant:

a. Defendant violated Labor Code §§ 201-203 by failing to pay all wages due on the date of the employee's involuntary termination or within 72 hours of the employee's voluntary termination.

b. Defendant violated Labor Code § 204 by failing to pay all wages due at least twice during each calendar month, in compliance with those provisions.

c. Defendant violated Labor Code § 216 by, having the ability to pay, willfully refusing to pay wages due and payable after demand has been made.

d. Defendant violated Labor Code § 226 by failing to provide accurate itemized wage statements.

e. Defendant violated Labor Code § 510 and provisions of the applicable IWC Wage Order by failing to compensate Class Members, including Plaintiffs, at one and one-half times the regular rate of pay for any work in excess of eight hours in a day and 40 hours in a week.

f. Defendant violated Labor Code §§ 226.7 and 512 by failing to provide meal and rest periods compliant with California law.

g. Defendant violated Labor Code § 1174 by failing to maintain payroll records showing the daily hours worked.

h. Defendant violated Labor Code §§ 1194 and 1197 and provisions of the applicable IWC Wage Order by failing to pay the legal minimum wage.

i. Defendant violated Labor Code § 1199 by requiring or causing the aggrieved employees, including Plaintiff, to work for longer hours than those fixed, or under conditions of labor prohibited by the applicable IWC Wage Order, by paying the aggrieved employees, including Plaintiff, a wage less than the minimum fixed by the applicable Wage Order, or by violating or refusing or neglecting to comply with the provisions of the Labor Code and applicable IWC Wage Order.

77. Plaintiff provided written notice on or about August 31, 2018 by certified mail to the Labor and Workforce Development Agency and to Defendant of the facts and theories regarding the violations of the Employment Laws and Regulations. Attached as Exhibit "1" is a true and correct copy of the letter sent to the LWDA and Defendant. The LWDA did not provide any written notice within 60 days advising Plaintiff that they intended to take action on Plaintiff's notice.

78. Pursuant to PAGA, Plaintiff and the other aggrieved employees should be awarded twenty-five percent (25%) of all penalties due under California law, including attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment against Defendants as follows:

1. For an Order certifying the First through Seventh Causes of Action as a class action;
2. For an Order maintaining the Eighth Cause of Action as a representative action;
3. For an Order appointing Plaintiff's counsel as Class counsel;

4. For compensatory damages in an amount to be ascertained at trial;
5. For restitution in an amount to be ascertained at trial;
6. For punitive and exemplary damages in an amount to be ascertained at trial;
7. For all penalties allowed by law;
8. For prejudgment interest;
9. For reasonable attorneys' fees pursuant to Labor Code §§ 218.5, 226, 1194, and 2699;
10. For costs of suit incurred herein;
11. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay wages, including overtime wages, earned; and
12. For such further relief as the Court may deem appropriate.

DATED: May 7, 2020

BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY

By: /s/ Armand R. Kizirian
MICHAEL H. BOYAMIAN
ARMAND R. KIZIRIAN
THOMAS W. FALVEY
Attorneys for Plaintiff John Ornelas,
individually and on behalf of all others similarly
situated

DEMAND FOR JURY TRIAL

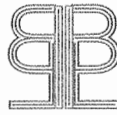
Plaintiff John Ornelas, individually and on behalf of all similarly situated individuals,
demand jury trial of this matter.

DATED: May 7, 2020

**BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY**

By: /s/ Armand R. Kizirian
MICHAEL H. BOYAMIAN
ARMAND R. KIZIRIAN
THOMAS W. FALVEY
Attorneys for Plaintiff John Ornelas,
individually and on behalf of all others similarly
situated

Exhibit “1”



BOYAMIAN LAW

August 31, 2018

SENT VIA ONLINE SUBMISSION TO:

Labor Workforce and Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

**Re: *Ornelas adv. Tapestry, Inc.*
Notice of PAGA Claims Pursuant to Labor Code Section 2699.3**

Dear Labor and Workforce Development Agency and Employer:

Our office, along with the Law Offices of Thomas W. Falvey, represent John Ornelas with respect to various wage and hour claims on behalf of himself and other similarly situated current and former non-exempt, hourly employees of Tapestry, Inc. ("Tapestry" or "the Company"). The purpose of this letter is to satisfy the notice requirements of Labor Code Section 2699.3(a). Also, enclosed with this letter, please find a check made out to the Labor Workforce and Development Agency in the amount of seventy-five dollars (\$75.00) for the filing fee of this matter.¹

Below we set forth the facts and theories which we believe support our contention that Tapestry has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to provide compensation for all hours worked, and meal and rest breaks.

A true and correct copy of the Complaint, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides further notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into

¹ Sent Via First Class U.S. Mail to the following address: Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102.

Labor and Workforce Development Agency & Tapestry, Inc.
August 31, 2018
Page 2 of 5

this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

Facts and Theories About the Case

Tapestry is an international luxury fashion company which owns and operates three major brands: Coach, Kate Spade, and Stuart Weitzman. John Ornelas worked for Tapestry in California as a Sales Associate. Mr. Ornelas worked at the Company's Stuart Weitzman retail locations in Canoga Park and Beverly Hills. Mr. Ornelas last worked for Tapestry in or around June of 2018. Throughout his employment with Tapestry, Mr. Ornelas was a non-exempt, hourly employee with overtime eligibility. Plaintiff typically worked eight (8) or more hours per day and five (5) days per week.

Our investigation has revealed that as part of a uniform, company policy in its retail locations located in California, Tapestry implements a security/loss prevention measure that requires all non-exempt employees, like Mr. Ornelas, to have their bags, jackets, and other items checked by a Tapestry personnel prior to leaving the store for all shifts and breaks. Tapestry routinely fails to give these employees, including Mr. Ornelas, their legally required duty-free meal and rest periods and full pay by requiring them to remain in the store for a substantial period of time off the clock to engage in the Company's theft prevention program.

Mr. Ornelas and other similarly situated non-exempt, hourly workers were required to undergo a bag check and security inspection upon exiting the store. This was a routine and continuous mandate. Aggrieved employees, including Mr. Ornelas, would clock out, would walk towards an exit where they would have to wait to have another Tapestry employee administer the bag and clothing check. Because these retail store locations were often understaffed, Mr. Ornelas had to wait anywhere from 5 to 20 minutes to have another colleague administer the security/loss prevention check process.

Aggrieved employees were not compensated for the time spent waiting to be released from the store. When aggrieved employees, including Mr. Ornelas, wait for and undergo the bag and security inspection, they are under the control of their employer and must be compensated for that time. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000); *See also Troester v. Starbucks Corp.*, 421 P.3d 1114 (2018) (recent California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.)

The unpaid hours are not reflected on wage statements issued to the employees, in violation of Labor Code Section 226. California Labor Code Section 226(a) governs the

Labor and Workforce Development Agency & Tapestry, Inc.

August 31, 2018

Page 3 of 5

information that must appear on wage statements. Specifically, Labor Code Section 226(a) requires that wage statements accurately itemize “(2) total hours worked by the employee...” Tapestry’s wage statements are facially non-compliant by virtue of the Company’s security check process which does not accurately record the total hours worked by aggrieved employees, including Mr. Ornelas. Accordingly, the wage statements do not accurately itemize or reflect showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

The failure to account for these hours or provide full meal break or rest periods has resulted in pay totals that equal less than minimum wage. The employees have also not been accorded any overtime pay that they would have received had Tapestry accounted for the hours worked off-the-clock.

These unpaid wages were also not paid at the time of the employees’ termination or resignation, in violation of Labor Code Section 203. Additionally, wages that had been accounted for were not paid to employees upon the requisite time following their termination or resignation.

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 (“PAGA”). Based on the foregoing facts, Mr. Ornelas is asserting PAGA claims on behalf of himself and on behalf of all other non-exempt, hourly employees employed by the Company in its California retail locations from August 31, 2017, to the present. Mr. Ornelas seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code sections 216, 1194, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, the Company does not pay minimum and overtime wages to Plaintiff and other non-exempt, hourly employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.

2. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, the Company does not permit Plaintiff and other non-exempt, hourly employees to take an uninterrupted, off-duty, and/or full meal periods, and does not pay one additional hour of pay at their regular rate of compensation for each missed meal period. The Company also does not provide Plaintiff and other non-exempt, hourly employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest

Labor and Workforce Development Agency & Tapestry, Inc.
August 31, 2018
Page 4 of 5

period.

3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as the Company does not include all hours worked and wages earned on the wage statements of Plaintiff and other non-exempt, hourly employees.

4. Violations of Labor Code sections 204 and 210, based on the Company's failure to pay Plaintiff and similarly situated non-exempt, hourly employees on the regular pay day all owed wages, and the Company's failure to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq.*

Accordingly, we believe the Company has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 2802, and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Mr. Ornelas and other similarly situated current and former non-exempt, hourly Sales employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

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Labor and Workforce Development Agency & Tapestry, Inc.
August 31, 2018
Page 5 of 5

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If the Company wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Sincerely,

BOYAMIAN LAW, INC.
LAW OFFICES OF THOMAS W. FALVEY



Michael H. Boyamian, Esq.

Cc: Tapestry, Inc. (*Sent via Certified U.S. Mail, Return Receipt Requested*)
Attention: Victor Luis, Chief Executive Officer
10 Hudson Yards
New York, New York 10001